

ORIGINAL

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EX PARTE OR LATE FILED

Chairman William Kennard

September 24, 1999

Federal Communications Commission
445 12th St. SW
Washington, DC 20554

RECEIVED

Ex Parte Filing in cases WT 99-217, CC 96-98

SEP 27 1999

Dear Chairman Kennard: **FCC MAIL ROOM**

As a professional consulting firm that is active in the field of telecommunications working with various communities, we are requesting that the rule proposed in above cases not be adopted.

Communities are very concerned about the proliferation of new phone companies and the effect of ongoing de-regulation and the impact that it may have on their ability to manage the rights-of-way for the benefit of their citizens but, also upon the continuing attempts by some parties to pre-empt the state and local building codes, zoning ordinances and other regulations that affect the placing of antennas on roofs. The rule being considered would result in an increasing, large number of companies allowed to place wires in buildings, antennas on the roof-all without the landlord's permission.

Local building and zoning codes are purely matters of local jurisdiction, which under the Tenth Amendment, you may not preempt.

Building codes are imposed in part for safety reasons and codes vary by region, climate area and building type (for example earthquakes, floods etc. come into play). Local zoning codes protect and promote public health and safety and ensure compatibility of uses, preserve property values and the character of the community. Local conditions prevail in applying zoning principles and these conditions vary widely from state to state, community to community and within the communities themselves (communities have business, commercial and industrial zones). It is important to note that these codes require that local authorities continually balance competing concerns with the provision of needed services. This has been done successfully, every day, for decades. Has that effort really impeded the progress of technology or the growth of the economy? We think an objective review of the facts will show otherwise! Further, are basic property rights, state and local building codes and ordinances within the power of the FCC to preempt?

On the matter of rights-of-way: Let me assure you that communities give a great deal of thought in creation and passage of right-of-way ordinances and often solicit input/ comments from the right-of-way users before passing such ordinances. It is not a responsibility that is taken lightly or approached in a cavalier manner in any sense of the term.

Rights-of-way are a valuable, finite, community owned asset. Owners of property have the right to control who comes on their property and the use that is made of such property. Carte blanche access to anyone's property for antennas and continued, free, uncontrolled use of community assets, such as rights-of-way, is a violation of basic property rights. Local management of right-of-way assets of the community has been recognized as a safe harbor under the 1996 Act.

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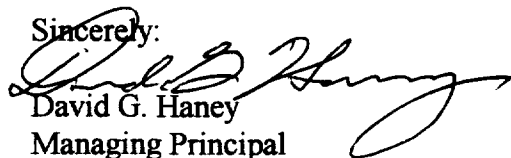
Federal laws reserve these powers to local authority, recognizing that local authority is best positioned to understand and provide for the protection of public health, safety and welfare at the local level. Congress has specifically prohibited FCC action in this area.

We believe that the complaints by telephone providers about rights-of-way management and fees is overstated. We ask that you look at the record over the past three years since passage of the 1996 Telecommunications Act and judge whether the number of court cases concerning these issues, compared to the number of local governments and phone providers, is so overwhelming and the problems so great that Federal action is warranted. There have been 12 cases nationwide since passage of the 1996 Act. With 38,000 municipalities nationwide and thousands of phone companies, we think the numbers speak for themselves.

Finally, your suggestion that tax burdens are too high for new phone companies is a surprise to all concerned. There is no FCC authority in the area of taxation.

We respectfully request that you give serious consideration to the above comments and that you please reject the proposed rule and take no action on rights-of-way and taxes.

Sincerely:


David G. Haney
Managing Principal

cc: Mr. George Voinovich, U.S. Senator, Ohio
Mr. Mike Dewine, U.S. Senator, Ohio
Ms. Deborah Pryce, U.S. Representative, 15th Congressional District
FCC Commissioner Harold Furchtgott-Roth
FCC Commissioner Michael Powell
FCC Commissioner Gloria Tristani
FCC Commissioner Susan Ness
Ms. Magalie Roman Salas, Secretary FCC
Mr. Jeffrey Steinberg, Wireless Telecommunications Bureau
Mr. Joel Tauenblatt, Wireless Telecommunications Bureau
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Ms. Barrie Tabin, Esq. Legislative Counsel, National League of Cities
Mr. Kevin McCarty, Assistant Executive Director, U.S. Conference of Mayors
Mr. Robert Fogel, Associate Legislative Director, National Association of Counties
Mr. Lee Ruck, Executive Director, NATOA
Mr. Thomas Frost, Vice President, Engineering Services, BOCA International